

# OPINION ON REHEARING



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## ATTORNEYS FOR APPELLANTS

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# IN THE COURT OF APPEALS OF INDIANA

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Scott Geels and Erica Leitch,  
*Appellants-Petitioners,*

v.

Desiree Morrow and Sean Riley,  
*Appellees-Respondents*

April 27, 2022

Court of Appeals Case No.  
21A-MI-960

Appeal from the Allen Superior  
Court

The Honorable Charles F. Pratt,  
Judge

Trial Court Cause No.  
02D08-1906-MI-000437

**May, Judge.**

[1] Scott Geels and Erica Leitch (“Appellants”) request rehearing, arguing this court “incorrectly decid[ed] the matter on an issue not raised by Appellants” and “fail[ed] to rule on the issue presented by Appellants[.]” (Appellants’ Reh. Br. at 5) (internal formatting omitted). Appellants point to our use of the word “guardianship” to indicate the type of proceeding appealed, *see, e.g., Geels v. Morrow*, 182 N.E.3d 237, 239 (Ind. Ct. App. 2022), *reh’g pending*, when in fact it was a “Verified Petition for [sic] to Establish De Facto Custodian Status and for Physical and Legal Custody of Minor Child by De Facto Custodians.” (Appellants’ Reh. Br. at 5.) We grant rehearing to acknowledge that “guardianship” was an inaccurate characterization of Appellants’ underlying proceedings, but we reaffirm the result we reached.

[2] Separate sections of the Indiana Code address guardianships and legal custody by a de facto custodians. *Compare* Ind. Code § 29-3-5-3 (indicating findings court must make to appoint a guardian) *with* Ind. Code § 31-17-2-8.5 (defining circumstances under which de facto custodian can have “legal custody of the child under Indiana law”). Nevertheless, both types of proceedings, when commenced with regard to a minor, require inquiry into the existence of de facto custodians, which are defined in Indiana Code section 31-9-2-35.5. *See* Ind. Code § 29-3-5-4 (indicating court should consider any request by a de facto custodian before appointing the guardian) & Ind. Code § 29-3-5-5 (indicating where de facto custodians fall in order of those who may obtain guardianship of a minor); *and see* Ind. Code § 31-17-2-8.5 (requiring court to determine first whether child has been cared for by a de facto custodian).

[3] In addition, both types of proceedings require determination of what is in the best interests of the minor. *See* Ind. Code § 31-17-2-8.5 (providing court may award custody to de facto custodian “if the court determines that it is in the best interests of the child”) & Ind. Code § 29-3-5-4(a)(9) (listing “best interest” as a consideration for the court’s guardianship decision). As a result, the types of issues that arise on appeal of both types of cases is similar. *See, e.g., In re Guardianship of B.W.*, 45 N.E.3d 860, 866-7 (Ind. Ct. App. 2015) (using “best interests” standard to determine if great aunt had overcome the natural parental presumption in favor of granting mother custody of child where great aunt sought to be child’s guardian); *and see In re Paternity of A.S.*, 984 N.E.2d 646, 652-3 (Ind. Ct. App. 2013) (using “best interests” standard to determine if grandmother had overcome the natural parental presumption in favor of granting mother custody in a case where grandmother filed for custody of child as a de facto custodian), *trans. denied*. Furthermore, the standard by which the two proceedings are reviewed on appeal are interchangeable.<sup>1</sup> *See, e.g., In re Custody of J.V.*, 913 N.E.2d 207 (Ind. Ct. App. 2009) (regarding custody by a de facto custodian and relying on *In re L.L. & J.L.*, 745 N.E.2d 222 (Ind. Ct. App. 2001) (guardianship of minor case), *trans. denied*; *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453 (Ind. 2009) (guardianship of minor case); *and In re Guardianship of B.H.*, 770 N.E.2d 283 (Ind. 2002) (guardianship of minor case), *reh’g denied*);

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<sup>1</sup> A fact about which Appellants’ counsel should be well aware, as they cited most of the cases we reference herein in their original appellate brief. (*See* Appellants’ Br. at 3) (Table of Authorities).

*and see In re Guardianship of B.H.*, 770 N.E.2d at 286 (interspersing discussion of guardianship and custody cases when determining the standard by which guardianship cases should be reviewed).

[4] Because the appellate review standards for guardianship cases and de facto custodian cases are used interchangeably by this court and our Indiana Supreme Court, we are unpersuaded that our erroneous reference to their cause as a guardianship proceeding warrants a reexamination of the merits of their appeal. Ultimately, our decision rested on our affirmation of the trial court's determination that Child's best interests were served by remaining in the custody of her Mother. That determination prohibits a ruling in Appellants' favor regardless of whether the proceeding was for guardianship or custody as de facto custodians. Thus, we decline Appellants' request that we modify our prior decision.

[5] We grant rehearing to correct our mislabeling of Appellants' underlying proceedings, but we affirm our prior decision in all other respects.

Brown, J., and Pyle, J., concur.